IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

D. SIDNEY POTTER, Plaintiff, v. PNC FINANCIAL SERVICES GROUP, INC., COMPUGAIN, LLC., WILLIAM S. DEMCHAK, VICKI HENN, DEBASISH HOTA, KARLIE HUBBARD and MICHAEL GRIMES, Defendants.	)	Civil Action No. ________________ *ELECTRONICALLY FILED*

NOTICE OF REMOVAL

To: The Honorable Judges of the United States District Court
for the Western District of Pennsylvania

Defendants, CompuGain, LLC ("CompuGain") and Debasish Hota, by and through their undersigned counsel, and in accordance with the applicable Federal Rules of Civil Procedure and Title 28 of the United States Code §§ 1331, 1332, 1441, and 1446, hereby file this Notice of Removal and remove the action entitled "D. Sidney Potter v. PNC Financial Services Group, Inc., CompuGain, LLC, William S. Demchak, Vicki Henn, Debasish Hota, Karlie Hubbard, and Michael Grimes," which was originally filed in the Court of Common Pleas of Allegheny County, Commonwealth of Pennsylvania, to the United States District Court for the Western District of Pennsylvania. Removal of this action is based upon the following:

BACKGROUND

1. Plaintiff, D. Sidney Potter, instituted this action (the "State Court Action") in the Court of Common Pleas of Allegheny County, Pennsylvania on or about October 30, 2015. A true and correct copy of the Complaint filed by Plaintiff is attached hereto as Exhibit A.

2. Plaintiff's Complaint in the State Court Action asserts employment and breach of contract claims in connection with his alleged employment by Defendant CompuGain to perform work for Defendant The PNC Financial Services Group, Inc. (erroneously named in the Complaint as "PNC Financial Services Group, Inc." and hereinafter referred to as "PNC") in Pittsburgh, Pennsylvania.

3. Specifically, Plaintiff's Complaint alleges claims for wrongful termination in violation of public policy, breach of contract, breach of the implied covenant of good faith and fair dealing, violation of the Age Discrimination in Employment Act of 1967, and violation of Title VII of the Civil Rights Act of 1964.

4. Moreover, Plaintiff's Complaint identifies the following as defendants with respect to some or all of the claims asserted:

- CompuGain;
- Debasish Hota, CompuGain President and Chief Executive Officer;
- PNC;
- William S. Demchak, PNC Chairman, President and Chief Executive Officer;
- Vicki Henn, PNC Chief Human Resources Officer;
- Karlie Hubbard, PNC Vice President and Senior Underwriter Manager; and
- Michael Grimes, PNC Assistant Vice President (collectively, "Defendants").

TIMELINESS OF REMOVAL

5. Defendants CompuGain and Debasish Hota have not yet been properly served with the Complaint. CompuGain and Debasish Hota first received notice of the Complaint on November 24, 2015 when copies of the Complaint were delivered via regular mail to 13241 Woodland Park Rd., Suite 100, Herndon, Virginia 20171.

6. Each defendant has 30 days to remove after being brought into the case. 28 U.S.C. § 1446(b).

7. In consequence, this Notice of Removal is timely filed in accordance with 28 U.S.C. § 1446(b) because it was filed within 30 days after CompuGain and Debasish Hota first received notice of the Complaint.

VENUE

8. The Court of Common Pleas of Allegheny County, in which Plaintiff's Complaint was filed, is within this Court's District. Therefore, the action is properly removable to this Court pursuant to 28 U.S.C. § 1446(a).

REMOVAL IS PROPER BASED ON FEDERAL QUESTION JURISDICTION

9. This action is within the original jurisdiction of this Court pursuant to 28 U.S.C. § 1331 because Plaintiff's civil action arises under federal statute. *See Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 808 (1986) (A "suit arises under the law that creates the cause of action.") (internal citations omitted).

10. Specifically, Plaintiff avers that Defendants discriminated against him on the basis of his age and gender, purportedly in violation of The Age Discrimination in Employment Act of 1967 and Title VII of the Civil Rights Act of 1964. *See* Ex. A.

11. In addition, Plaintiff brings state-law claims for wrongful termination, breach of contract, and breach of the implied covenant of good faith and fair dealing. As pled, these state-law claims and Plaintiff's federal ADEA and Title VII claims derive from a "common nucleus of operative fact." *City of Chi. v. Int'l College of Surgeons*, 522 U.S. 156, 164-65 (1997).

12. Accordingly, Plaintiff's federal- and state-law claims form part of the same case or controversy so that this Court may exercise supplemental jurisdiction over Plaintiff's claims under Pennsylvania law. 28 U.S.C. § 1367(a); 28 U.S.C. § 1441(c).

REMOVAL IS PROPER BASED ON DIVERSITY JURISDICTION

13. This action is also within the original jurisdiction of this Court pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between citizens of different States. 28 U.S.C. § 1332(a)(3).

14. Plaintiff and all Defendants, whether or not properly served, are diverse from one another.

15. Although Plaintiff does not identify his State of residence, he lists his mailing address as a P.O. Box located in Pasadena, California. *See* Ex. A. The preponderance of evidence demonstrates that Plaintiff is domiciled in California and is a citizen of California for the purposes of diversity jurisdiction.

16. CompuGain, although not properly served, is and was, at the time of the filing of the Complaint and at the time of removal, a limited liability corporation formed under the laws of Delaware. Ex. B, Declaration of Nicole Cayer ("Cayer Decl.") at ¶ 5. CompuGain's sole member is CompuGain Holding Corporation, a Virginia corporation with a principal place of business in Virginia. Ex. B, Cayer Decl. at ¶¶ 5-10. Based on the "nerve center" test, CompuGain Holding Corporation is a citizen of Virginia. 28 U.S.C. § 1332(c); *see generally*

Hertz v. Friend, 130 S. Ct. 1181 (2010). As such, CompuGain is a citizen of Virginia. *See Lincoln Benefit Life Co. v. AEI Life, LLC*, 800 F.3d 99, 105 (3d Cir. 2015) ("[T]he citizenship of an LLC is determined by the citizenship of its members.").

17. Individual Defendant Debasish Hota, CompuGain President and CEO, although not properly served, is and was, at the time of the filing of the Complaint and at the time of removal, a citizen and resident of Virginia, and intends to remain as such. Ex. C, Declaration of Debasish Hota ("Hota Decl.") at ¶ 3.

18. Defendant PNC, whether or not properly served, is and was, at the time of the filing of the Complaint and at the time of removal, a Pennsylvania corporation with its principal place of business in Pennsylvania. Ex. D, Declaration of Judith Haas ("Haas Decl.") ¶ 4. Accordingly, PNC is a citizen of Pennsylvania. 28 U.S.C. § 1332(c).

19. None of the other individual Defendants—William S. Demchak, Vicki Henn, Karlie Hubbard, or Michael Grimes (hereinafter the "PNC Individual Defendants")—is a citizen or resident of California. Ex. D, Haas Decl. ¶¶ 5-8.

20. The amount in controversy in this matter exceeds $75,000 because Plaintiff's Complaint states that Plaintiff has suffered general and special damages in an amount in excess of $85,000. *See* Ex. A ¶ 7; 28 U.S.C. § 1446(c).

21. Furthermore, Plaintiff also seeks attorneys' fees and punitive damages. Although Defendants strongly deny Plaintiff's allegations, if Plaintiff prevails on his claims and establishes liability, an award of attorneys' fees and of punitive damages could, alone, satisfy the jurisdictional amount in controversy requirement.

22. Accordingly, Plaintiff's allegations satisfy the jurisdictional prerequisite for amount in controversy, as Plaintiff has alleged his damages to be in excess of $85,000, and it

cannot be said to a legal certainty that Plaintiff would not be entitled to recover the jurisdictional amount.

CONSENT TO REMOVAL

23. CompuGain and individual defendant Debasish Hota, although not properly served, consent to removal. *See* Ex. B, Cayer Decl. ¶ 11; Ex. C, Hota Decl. ¶ 4.

24. PNC and all PNC Individual Defendants, whether or not properly served, consent to removal. Ex. E, Declaration of Shelly Pagac ("Pagac Decl.") ¶ 4.

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

25. Copies of all process, pleadings, orders, and other papers or exhibits of every kind currently on file in the Court of Common Pleas of Allegheny County, Pennsylvania, are attached to this Notice of Removal as Exhibit F, as required by 28 U.S.C. § 1446(a).

26. Upon filing this Notice of Removal, Defendants will provide a written notification to Plaintiff and will file a Notice of Filing of Notice of Removal with the clerk of the Court of Common Pleas of Allegheny County, Pennsylvania. As required by 28 U.S.C. § 1446(d), a true and correct copy of the Notice of Filing of Notice of Removal is attached hereto as Exhibit G.

27. Defendants consent to and file this Notice without waiving any defenses to the claims asserted by Plaintiff, without conceding that Plaintiff has stated claims upon which relief can be granted, and without conceding that Plaintiff is entitled to any damages against Defendants in any amount whatsoever.

WHEREFORE, Defendants CompuGain and Debasish Hota respectfully request that the United States District Court for the Western District of Pennsylvania accept the removal of this action from the Court of Common Pleas of Allegheny County, Pennsylvania and direct that that Court have no further jurisdiction over this matter unless this case is remanded.

Dated: December 23, 2015

Respectfully submitted,

JACKSON LEWIS P.C.

/s/ Marla N. Presley

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Counsel for Defendants CompuGain, LLC and Debasish Hota

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

D. SIDNEY POTTER,	)	
	)	Civil Action No. _________________
Plaintiff,	)	
	)	
v.	)	
	)	
PNC FINANCIAL SERVICES GROUP,	)	*ELECTRONICALLY FILED*
INC., COMPUGAIN, LLC., WILLIAM S.	)	
DEMCHAK, VICKI HENN, DEBASISH	)	
HOTA, KARLIE HUBBARD and	)	
MICHAEL GRIMES,	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2015, I electronically filed the foregoing NOTICE OF REMOVAL with the Clerk of the Court using the CM/ECF system, and have provided a courtesy copy to Plaintiff, *pro* se, at the following address, via U.S. Mail:

D. Sidney Potter, *pro se*
P.O. Box 287
Pasadena, CA 91102

/s/ *Marla N. Presley*
Marla N. Presley

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